IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8760 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANDEEP HARESHBHAI AGRAWAL

Versus

ALLAUDIN JAMALUDDIN

Appearance:

MR RV DESAI for Petitioner

MR DJ BHATT for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/05/2001

ORAL JUDGEMENT

#. In this petition, the order dated 24-5-2000 of the authority under the Payment of Wages Act is under challenge. Various grounds of challenge to the impugned order are enumerated in the petition.

#. Shri DJ Bhatt appears for the respondent no.1 and he raises a preliminary objection that the writ petition

under Art.226 of the Constitution of India is not maintainable on the facts and circumstances of the case, especially in view of provision for appeal contained under sec.17 of the Payment of Wages Act. His objection is that, since there is a statutory provision for appeal against the order of the authority under the Payment of Wages Act, the petitioner should have availed of that alternative remedy which is efficacious, and since the alternative statutory remedy has not been availed of by the petitioner, this Court will not exercise jurisdiction under Art.226 or under Art.227 of the Constitution of India.

#. Shri RV Desai, learned counsel for the petitioner, however, contended that, in appropriate cases jurisdiction can be exercised by the High Court under Art.226 as well as under Art.227 of the Constitution of India. Few cases were cited by Shri Desai in support of his contention. A judgment of the Supreme Court was cited by Shri DJ Bhatt in support of his preliminary objection and another pronouncement of the Jammu & Kashmir High Court was also cited by him. There can be no dispute that the impugned order under challenge was passed by the authority under the Payment of Wages Act on an application under sec.15 of the Payment of Wages Act. Sec.17 of the Act provides for a remedy of appeal. Sec.17(1) provides that, an appeal against the order dismissing either wholly or in part an application made under sub-sec(2) of sec.15 or against the direction made under sub-sec(3) of sec.4 of that section may be preferred within 30 days of the date on which the order or direction was made in presidency town before the Court of Small Cause and else where before the District Court. There is no dispute regarding existence of alternative remedy for filing appeal. However, Shri Desai has referred to several decisions in support of his contention that, it is a fit case where jurisdiction should be exercised under Art.226 as well as under Art.227 of the Constitution of India. The cases cited by the learned counsel for the parties are being discussed as under :

#. Shri DJ Bhatt, learned counsel for the respondent has referred to the case of FIDA HUSSAIN v. PRESIDING OFFICER 1996 LAB.I.C. 503. However, this case does not help Shri Bhatt because it was altogether on a different point. Here, the question involved was, whether an appeal under sec.17 of the Payment of Wages Act is to be filed before the District Court or before the Industrial Tribunal or Labour Court. The appeal was filed before the Industrial Tribunal/Labour Court and it was held

that, such appeal is incompetent and the Industrial Tribunal has no appellate jurisdiction either under the Industrial Disputes Act or under any other law to entertain an appeal against the order under sec.15 of the Payment of Wages Act. This case, therefore, does not deal with the situation whether jurisdiction under Art.226 of the Constitution of India could be exercised on the facts and circumstances of the case before me.

#. The second case relied upon by Shri Bhatt is Supreme Court's verdict in KARNATAKA CHEMICAL INDUSTRIES v. UNION OF INDIA (2000)10 S.C.C. 13. In this case the Apex Court held that, the question involved in the appeal was regarding interpretation of provisions of the statute and the provisions were interpreted by various decisions rendered by the Apex Court. The Supreme Court observed that, 'in any case when there is no challenge to the validity of any statutory provision, there is no reason as to why a writ petition should have been filed by-passing the alternative remedy which is provided under the statute.' Thus, the ratio of this case is that, if there is a statutory alternative remedy, in that case, writ petition should not have been filed and entertained, and on this ground the appeal was dismissed by the Apex Court. Thus, the Apex Court has emphasized that, if there is a statutory remedy, it should have been availed of and writ petition should not have been filed or entertained.

#. Shri RV Desai has, however, referred to four cases before me. The first is the case of DIVISIONAL ACCOUNTS OFFICER, EASTERN RAILWAY, DANAPUR v. ADDITIONAL DISTRICT JUDGE, VARANASI 1969 LAB.I.C. 609. In this case, the facts were altogether different, and on those facts, the Allahabad High Court held that, in appropriate cases writ jurisdiction can be exercised. It was held that illegal orders of authorities under the Payment of Wages Act which are without jurisdiction can be interfered in exercise of writ jurisdiction. This observation was made in the back drop of facts which were altogether different. Here, disciplinary enquiry was conducted against the employee, respondent no.8. On the basis of enquiry report, the said respondent was reduced in rank. His appeal against the order of reduction in rank was dismissed. Thereafter, he approached the Payment of Wages Authority on the ground that, there has been deduction of his wages. The Payment of Wages Authority accepted this stand of the employee, respondent no.8 and the appellate authority also, while dismissing the appeal, held in favour of the respondent no.8. On these

facts, it was held that the explanation-(2) to sec.7(1) of the Payment of Wages Act is in the nature of restriction on the powers of the Payment of Wages Authority and curtails its jurisdiction in case where reduction of rank has been ordered for good and sufficient reasons. The provision does not extend the jurisdiction of the authority. All that the explanation means is that, when there is a valid order reducing a person in rank, then the Payment of Wages Authority could not have jurisdiction to hold that there has been a deduction in wages. Thus, it was a case where the Payment of Wages Authority totally lacked jurisdiction in ignoring the finding of the disciplinary authority duly confirmed in appeal and came to the conclusion that there were no good and sufficient reasons for order of reduction in rank. It was, thus, a case where patent jurisdictional error was involved in the order of the Payment of Wages Authority, hence, interference under Art.226 of the Constitution of India was made.

#. The next case cited by Shri Desai is of S.G.PAPER MILLS v. RAM LABHAYA MAL AIR 1960 PUNJAB 375. In this case it was held that, the power to examine the legality of the impugned order under sec.15 of the Payment of Wages Act could be exercised if it is shown that the order in dispute could not have been legally made and was outside the jurisdiction of the authority concerned. Then clearly the High Court is competent to interfere. The ratio of this case, therefore, is that, if it is made out that the order in question was outside the jurisdiction of the authority concerned or it could not have been legally made, interference under Art.226 or Art.227 is permissible. However, it could not be shown before me by Shri Desai that except authority under the Payment of Wages Act, there is some authority before whom an application under sec.15 of the Act could be made. Thus, prima facie, authority under the Payment of Wages Act had jurisdiction to entertain an application under sec.15 of the Act. Whether such authority could have passed the impugned order legally or not, is a matter which can be examined by the appellate authority when an appeal is filed under sec.17 of the Act and not that the writ jurisdiction should be exercised in such cases.

#. Another case referred by Shri Desai is of MEWAR TEXTILE MILLS v. GIRDHARI SINGH AIR 1957 RAJASTHAN 115. The ratio of this case is that, 'it would be within the power of the High Court to interfere with the order of the authority under sec.15, Payment of Wages Act, in appropriate case under Art.227. Whether in practice the High Court should interfere or should not interfere is a

question to be decided on the facts and circumstances of the particular decision challenged under Art.227. While the High Court should not place itself in the position of an appellate or revisional Court so as to correct mere errors of law or of fact committed by the Courts or Tribunals within its territorial jurisdiction, at the same time it is its duty to see that such Courts and Tribunals act within the due bounds of their authority and that they exercise such authority in the manner prescribed by law and not arbitrarily or capriciously.' It is, therefore, clear from this observation that in the first instance, the High Court will not sit over the order of the authority under the Payment of Wages Act as a revisional Court or as an appellate Court. The High Court can not substitute its own reasoning and finding contrary to that which has been given by the authority under the Payment of Wages Act. The impugned order can not be said to be arbitrary or capricious. Consequently, the writ petition is not to be exercised on the facts and circumstances of the case.

#. The last case referred by Shri Desai has been the case of SARPANCH, LONAND GRAM PANCHAYAT v. RAMGIRI AIR 1968 S.C. 222.In this case, the Apex Court observed that, 'the power of superintendence over tribunals vested in the High Court under Art.227 of the Constitution is not greater than the power under Art.226 and is limited to seeing that the tribunal functions within the limits of its authority. The High Court will not review the discretion of the Authority judicially exercised, but it may interfere if the exercise of the discretion is capricious or perverse or ultra vires. The High Court may refuse to interfere under Art.227 unless there is grave miscarriage of justice. The Court can not interfere merely because it might take a different view of the facts and exercise the discretion differently.'
##. After hearing Shri Desai, I find that it is not a case where grave miscarriage of justice has been done by the authority under the Payment of Wages Act. He has placed great emphasis upon the fact that the Payment of Wages Authority has passed the impugned order against the petitioner, who is not a party to the award under which the liability has been fixed on an application under sec.15 of the Act. He further contended that, when the award was rendered, the petitioner, M/s.Dipak Auto Builders was not in existence. These are the questions which can safely be decided by the appellate authority under sec.17 of the Act and the High Court will not enter in evidence to find out as to who was party to the award and whether the award is binding on the petitioner or whether the petitioner was in existence on the date when

the award was rendered or not. Prima facie, the order of the authority under the Payment of Wages Act can neither be called capricious nor perverse nor ultra vires. The correctness of the order of the authority under the Payment of Wages Act can be examined by the appellate authority. On the facts and circumstances of the case, I do not find it expedient to exercise jurisdiction under Art.226 or 227 of the Constitution of India, inasmuch as, alternative efficacious and alternative statutory remedy of appeal is provided under sec.17 of the Act.

#. The petition is, therefore, dismissed on this preliminary objection. No order as to cost.

May 3, 2001. [D.C. Srivastava, J.]
/sakkaf